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September 28, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 14, 2005

Case Number: TSO-0326

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual has held a DOE security clearance for several years while working for a DOE contractor. In September 2004, the police arrested the individual and charged him with "Driving While Under the Influence of Intoxicating Liquor" (DUI). After the individual reported his arrest to the DOE, the DOE conducted a Personnel Security Interview with the individual in December 2004 to obtain information regarding the circumstances surrounding the arrest and the extent of the individual's alcohol use. After the PSI, the DOE referred the individual to a DOE consultant-psychiatrist for an agency-sponsored mental evaluation. The DOE consultant-psychiatrist examined the individual in July 2005, and memorialized his findings in a report (Psychiatric Report or Exhibit 6). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse and is, and has been, a user of alcohol habitually to excess. At the time of the psychiatric evaluation, the DOE consultant-psychiatrist did not believe that the individual had shown adequate evidence of rehabilitation or reformation from his alcohol abuse or his habitual use of alcohol to excess.

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In October 2005, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of one potentially disqualifying criterion. The relevant criterion is set forth in the security regulations at 10 C.F.R. § 710.8, subsection j (Criterion J).²

Upon his receipt of the Notification Letter, the individual, through his attorney, exercised his right under the Part 710 regulations and requested an administrative review hearing. On December 14, 2005, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing in the case in accordance with the Part 710 regulations.

At the hearing, nine witnesses testified. The LSO called one witness and the individual presented his own testimony and that of seven witnesses. In addition to the testimonial evidence, the LSO submitted 25 exhibits into the record; the individual tendered seven exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even

² Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j).

appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites Criterion J as the basis for suspending the individual's security clearance. To support Criterion J, the LSO relies on (1) a psychiatric diagnosis that the individual suffers from alcohol abuse; (2) a psychiatrist's opinion that the individual is, and has been, a user of alcohol habitually to excess; and (3) the individual's two arrests for DUI, one in 1990 and the other in 2004.

The information set forth above clearly constitutes derogatory information that raises questions about the individual's alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

IV. Findings of Fact

The individual started consuming alcohol in high school "to unwind." Ex. 6 at 5. In May 1990 at age 20, the individual received his first DUI. *Id.* As a result of the 1990 DUI, the individual was fined, ordered to attend a DUI school and alcohol counseling, and placed on probation for a period of time. Ex. 14 at 2.

In 1998, the individual obtained employment with a DOE contractor. Sometime thereafter, the individual's employer sought a security clearance for him. During an ensuing background investigation, some derogatory information surfaced about, among other things, the individual's alcohol use and past illegal drug use. As a result, the LSO conducted two personnel security interviews with him, one in 1999 and the other in 2000. Exhibits 15 and 17. In November 2000, the LSO referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist #1) for a mental evaluation. DOE consultant-psychiatrist #1 examined the individual on November 28, 2000 after which he determined that the individual neither (1) presented signs or symptoms of a mental illness or disorder that would cause a significant defect in his judgment and reliability, nor (2)

had a diagnosable alcohol problem. Ex. 14 at 6. Sometime thereafter, the DOE granted the individual a DOE security clearance.

After the individual received his security clearance, he drank to the point of intoxication approximately twice a month. Ex. 6 at 5. In September 2004, the police arrested the individual and charged him with DUI after his blood alcohol level (BAC) registered .14 on a BAC test. The court subsequently fined the individual, gave him 48 hours of jail time, suspended his license for 90 days and placed him in a first offender's program for 15 weeks. *Id.* at 7.

In December 2004, the LSO conducted another personnel security interview with the individual to discuss the 2004 DUI arrest and his alcohol usage. Ex. 8. Because questions about the individual's alcohol usage remained unresolved after the 2004 PSI, the LSO referred the individual to DOE consultant-psychiatrist #2. DOE consultant-psychiatrist #2 conducted a forensic psychiatric examination of the individual in July 2005. In the Psychiatric Report, DOE consultant-psychiatrist #2 diagnosed the individual as suffering from alcohol abuse in a state of partial remission, and opined that the individual is, and had been, a user of alcohol habitually to excess. Ex. 6 at 9. DOE consultant-psychiatrist #2 also opined that the individual was not rehabilitated or reformed from his alcohol abuse because the individual "continued to rely excessively on alcohol on weekends to the point of getting intoxicated perhaps twice monthly." *Id.* DOE consultant-psychiatrist #2 also stated that as of July 2005 the individual continued to rely on alcohol to cope with stress in his life. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

Alcohol Abuse

The diagnosis in this case is not in issue because the individual's psychologist and DOE consultant-psychiatrist #2 both agree that the individual suffers from alcohol abuse. Transcript of Hearing (Tr.) at 10, 34. The two experts disagree, however, regarding the

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

crux of this case, *i.e.*, whether the individual is rehabilitated or reformed from his alcohol abuse and his habitual use of alcohol to excess. *Id.* at 13-17, 34-69, 210-222.

Evidence relating to Rehabilitation or Reformation

The individual testified that he has been abstaining from alcohol since July 2005 (*id.* at 179), has attended Alcoholics Anonymous (AA) meetings since August 2005 (*id.* at 180), and has completed his court-ordered DUI program (*id.* at 174). To corroborate in part his testimony, the individual submitted sign-in records from nine AA meetings⁴ that he attended between November 2005 and February 2006 and a Certificate of Completion for his court-ordered DUI program. *See* Ex. E. The individual testified that his girlfriend serves as his support system and that he is dealing with stressors in his life without resorting to alcohol. *Id.* at 184. Under questioning at the hearing, the individual revealed that he was just starting Step 1 of the AA program and opined that he does not believe there are any triggers that caused him to drink in the past. *Id.* at 201, 187.

The individual's girlfriend with whom he has lived for 11 years confirmed that the individual stopped consuming alcohol in July 2005. *Id.* at 150. She testified that the individual is proactive in his alcohol rehabilitation and that she, his friends, and AA support him in his efforts to maintain his sobriety. *Id.* at 153, 162.

The individual's AA sponsor testified that he has known the individual for three months and has been his sponsor for one week. *Id.* at 105, 113. The AA sponsor testified that he has seen the individual at AA meetings "occasionally." *Id.* at 105. He stated that he has a "feeling that the individual realizes the impact alcohol is having on his life." *Id.* at 115. He revealed that the individual has not started to work the AA steps yet. *Id.* at 116.

The individual's psychologist testified that she met the individual in August 2005 at the request of the individual's attorney. *Id.* at 34, 61. As of the date of the hearing in March 2006, the psychologist had provided psychotherapy to the individual during 20 sessions. *Id.* at 69. The psychologist is using the therapy sessions with the individual to explore the suspension of the individual's security clearance, his recent purchase of a new home and his moving from one house to another, and the continuing demands of his going to school in the evening while working full time. Ex. G. The psychologist disagrees with DOE consultant-psychiatrist #2 regarding the individual's ability to handle stressors in his life. Tr. at 41. She opined that (1) the individual has a strong ability to cope with stress, and (2) he never drank to relieve stress. *Id.* at 39, 41. For these reasons, she is not teaching him to identify triggers that might cause him to drink alcohol. *Id.* at 39, 41. The psychologist further testified that her role in helping the individual maintain his sobriety is "fairly minimal." *Id.* at 63. She related that the only change that the individual has made in his life since the 2004 DUI (*id.* at 50) is to abstain from alcohol, an action that she believes is pivotal to the individual's recovery efforts. *Id.* at 59. She admitted during her testimony that the individual still associates with some friends who consume alcohol,

⁴ The individual claims that he did not get his AA card signed each time he attended a meeting. *Id.* at 180. For this reason, he contends that the card does not accurately reflect the number of meetings that he has attended. *Id.*

and that he has not made any major change in his recreational or social activities. *Id.* at 36. When questioned on cross-examination about her plan for future therapy sessions with the individual, the psychologist testified that “we have an appointment scheduled this week, and [the individual] has authorization for additional sessions through his insurance [although] we have not discussed it.” *Id.* at 70. She then opined that future therapy sessions are not necessary for the individual’s alcohol abuse to remain in remission. *Id.* She concluded by stating that the individual’s risk of relapse is very low. *Id.* at 40, 52.

DOE consultant-psychiatrist #2 testified twice at the hearing. During his first appearance, DOE consultant-psychiatrist #2 stated that at the time he examined the individual in July 2005, he believed that the individual was “heading in the right direction.” *Id.* at 13. He stated that his principal concern in July 2005 was the stressors in the individual’s life. *Id.* He opined that, in view of the individual’s history of relying on substances to “self medicate” his emotional state, the individual needed a minimum of one year of counseling to prevent him from drifting back into a serious pattern of drinking. *Id.* at 13, 15, 17. After all the witnesses had testified, DOE consultant-psychiatrist #2 testified a second time. He first pointed out that it is one year of treatment, monitoring and counseling that is important in this case, not one year of abstinence. *Id.* at 219. He reiterated his opinion that in light of the individual’s long pattern of relying on substances excessively during periods of stress, the individual must develop, over a minimum period of one year, new coping strategies to deal with the stressors in his life. *Id.* at 210-211. DOE consultant-psychiatrist #2 expressed his concern about the following matters: (1) the individual’s psychologist does not think that the individual needs more treatment, (2) the individual testified that he does not know what triggers place him at risk for alcohol use, (3) the individual has only started working on Step 1 of the AA program, and (4) the individual has had an AA sponsor for only one week. *Id.* at 215. With regard to the individual’s completion of the court-ordered DUI program, DOE consultant-psychiatrist #2 opined that the program is not, in his view, “treatment.” In the end, DOE consultant-psychiatrist #2 opined that the individual was not rehabilitated or reformed from his alcohol abuse as of the date of the hearing because he did not have one year of treatment, monitoring and counseling. *Id.* at 215.

Evaluation of Evidence

As an initial matter, I am impressed that the individual decided on his own to stop consuming alcohol even though DOE consultant-psychiatrist #2 did not recommend abstinence as a component of rehabilitation or reformation. However, DOE consultant-psychiatrist #2 convinced me that alcohol treatment such as AA and psychological counseling is an integral component of the individual’s recovery plan. DOE consultant-psychiatrist #2 also convinced me that a minimum of one year of treatment and counseling is necessary to break the individual’s long-term pattern of relying on substances to cope with stress in his life.

With regard to the individual’s treatment to date, I first find that the individual did not provide probative testimony regarding what, if anything, he learned specifically from the

DUI program or whether it had any impact on his decision to stop drinking.⁵ Moreover, DOE consultant-psychiatrist #2 convinced me that the court-mandated DUI school is not adequate treatment to address the individual's alcohol-related issues in this case. As for the 20 counseling sessions with the psychologist, I find that the treatment is not of sufficient duration to demonstrate rehabilitation in this case. At the time of the hearing, the individual had been under the psychologist's care for approximately six months. In addition, I had some other concerns about the treatment itself and whether the individual intended to remain in treatment after the hearing. Specifically, I was surprised by the psychologist's testimony that she perceived her role in helping the individual maintain his sobriety as "minimal" and that she had not taught the individual to identify the triggers that could lead to stress and drinking. Also, it was unclear from the psychologist's and the individual's testimony how long after the hearing the individual would remain in therapy. From the record, I am uncertain whether the individual will continue in therapy with the psychologist for the one-year period recommended by DOE consultant-psychiatrist #2. In the end, what is relevant is that the individual did not provide evidence as of the date of the hearing to demonstrate that he was rehabilitated or reformed from his alcohol abuse and habitual use of alcohol to excess.

As for AA, several factors lead me to conclude that the individual's "active" participation in the program only began around the date of the hearing.⁶ First, he had just begun working on the first step of the program at the time of the hearing. Second, he had only found a sponsor a week before the hearing. Third, the AA sponsor's testimony did not provide any insight into (1) whether the individual regularly attended AA, (2) whether the individual had verbalized his intentions with regard to alcohol, and (3) whether the individual was committed to remaining in AA. Fourth, the individual did not provide any testimony that would allow me to conclude that he has embraced the concepts espoused by AA and is committed to using that program as a tool to aid him in maintaining his sobriety.

After carefully reviewing the evidence in this case, I am not convinced that, as of the date of the hearing, the individual is rehabilitated or reformed from his alcohol abuse or habitual use of alcohol to excess. Until the individual demonstrates that he has completed at least one year in counseling and treatment,⁷ I cannot find that the individual will be successful in his efforts to recover from his alcohol abuse and habitual, excessive use of alcohol. For this reason, I find that the individual has not brought forth sufficient evidence to mitigate the security concerns predicated on Criterion J in this case.

⁵ I was troubled throughout the hearing by the leading questions asked by the individual's Counsel of the individual and his witnesses. At times, it was as though the individual's Counsel was testifying about facts in this case. This style of questioning made it difficult for me to assess the candor of the witnesses in general and the individual's commitment to sobriety in particular. I voiced my concerns about the individual's Counsel's style of questioning at the beginning of the hearing but to no avail. Tr. at 31.

⁶ Even though the individual testified that he had attended more than the nine AA meetings shown on the sign-in sheets (Ex. E), the record does not allow me to find that the individual has regularly attended AA since August 2005.

⁷ I would be inclined to measure the individual's participation in AA from the date he began working Step 1, *i.e.*, sometime in March 2006, not the date he alleges he first started attending AA.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns associated with Criterion J. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: September 28, 2006